

110TH CONGRESS
2D SESSION

H. R. 5828

To enhance the reliability of information in the Automated Export System,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2008

Mr. MANZULLO (for himself and Mr. SMITH of Washington) introduced the
following bill; which was referred to the Committee on Foreign Affairs

A BILL

To enhance the reliability of information in the Automated
Export System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Exports
5 Through Coordination and Technology Act”.

6 **SEC. 2. MANDATORY ELECTRONIC FILING OF EXPORT**
7 **DATA.**

8 Section 1404(b) of the Foreign Relations Authoriza-
9 tion Act, Fiscal Year 2003 (13 U.S.C. 301 note) is amend-
10 ed to read as follows:.

1 “(b) IN GENERAL.—

2 “(1) FILING THROUGH AES.—The Secretary of
3 Commerce, in consultation with the Secretary of
4 State, the Secretary of Defense, the Secretary of the
5 Treasury, and the Secretary of Homeland Security,
6 shall publish regulations in the Federal Register to
7 require that upon the effective date of the regula-
8 tions, persons who are required to file Shipper’s Ex-
9 port Declarations under chapter 9 of title 13, United
10 States Code, file (either themselves or through their
11 intermediaries) such Declarations through the Auto-
12 mated Export System before the items are exported
13 from any United States port, unless the Secretary of
14 Commerce determines that it is appropriate to grant
15 an exception to this requirement. Such filing of data
16 shall, at a minimum, include—

17 “(A) the name and address of the principal
18 party-in-interest in the United States;

19 “(B) the foreign principal party-in-interest;

20 “(C) all intermediate consignees;

21 “(D) the ultimate consignee;

22 “(E) the commodity classification of each
23 item being exported;

24 “(F) when appropriate, the license number
25 or regulatory authorization for the export; and

1 “(G) a declaration, under penalty of per-
 2 jury under the laws of the United States, that
 3 the information filed under this paragraph is
 4 true and correct.

5 “(2) INTERMEDIARY DEFINED.—In this sub-
 6 section, the term ‘intermediary’ means a freight for-
 7 warder, a non-vessel operating common carrier
 8 (NVOCC), an ATA (Admission Temporaire/Tem-
 9 porary Admission) Carnet national guaranteeing as-
 10 sociation and its service providers, or any other simi-
 11 lar entity as determined by the Secretary of Com-
 12 merce.”.

13 **SEC. 3. CONFIDENTIALITY OF SHIPPER’S EXPORT DEC-**
 14 **LARATIONS; CONFERENCES; AUTOMATED EX-**
 15 **PORT SYSTEM LICENSES AND FILINGS.**

16 Chapter 9 of title 13, United States Code, is amend-
 17 ed—

18 (1) by redesignating sections 302 through 307
 19 as sections 306 through 311, respectively; and

20 (2) by inserting after section 301 the following
 21 new sections:

22 **“§ 302. Confidentiality of Shipper’s Export Declara-**
 23 **tions**

24 “(a) CONFIDENTIALITY.—Shipper’s Export Declara-
 25 tions and Automated Export System filings (or any suc-

cessor document), wherever located, shall be exempt from disclosure to the public, except to the extent that the information in such filings is made available under subsection (b)(1) and is introduced into evidence, and made a part of the public record, in an enforcement proceeding pursuant thereto.

“(b) SHARING WITH OTHER AGENCIES AND GOVERNMENTS.—

“(1) AGENCIES IN THE UNITED STATES.—The Secretary shall, if the Secretary determines that it is in the national interest to do so, provide for the sharing of Shipper’s Export Declaration information with other Federal departments and agencies in order to enforce or administer export laws and regulations of the United States, and for such other purposes as the Secretary may determine.

“(2) FOREIGN GOVERNMENTS.—The Secretary may, if the Secretary determines, on a case by case basis, that it is in the national interest to do so, provide for the sharing of Shipper’s Export Declaration information with foreign governments to assist in the enforcement of export laws and regulations of the United States and to conduct and coordinate programs to combat terrorism and the proliferation of weapons of mass destruction, except that the

1 sharing of such information may be permitted only
2 if the foreign government concerned—

3 “(A) has certified to the Secretary that the
4 information shared will only be used for the
5 purpose of enforcing export laws and regula-
6 tions of the United States, international agree-
7 ments providing for the nonproliferation of
8 weapons to which the United States is a party,
9 or multilateral export control regimes to which
10 the United States is a party; and

11 “(B) has, through a bilateral or multilat-
12 eral agreement (including a memorandum of
13 understanding) to which the United States is a
14 party, agreed that the information shared will
15 not be disclosed to any commercial entity.

16 “(c) INFORMATION NOT TO BE WITHHELD FROM
17 CONGRESS.—Nothing in this section shall be construed as
18 authorizing the withholding of information from the Con-
19 gress.

20 **“§ 303. Conferences and seminars**

21 “(a) MANDATORY CONFERENCE PARTICIPATION.—
22 The Secretary shall work with the Secretary of State, the
23 Secretary of Defense, the Secretary of Homeland Security,
24 and the Secretary of the Treasury to ensure that appro-
25 priate personnel of each of their respective departments

1 and agencies that are involved in the regulation of exports
2 or the enforcement of such regulation are made available
3 to participate in fora the purpose of which is to educate
4 exporters about laws and regulations of the United States
5 governing exports and about the Automated Export Sys-
6 tem in particular, including through seminars, educational
7 or training meetings, exhibitions, symposiums, and other
8 similar meetings.

9 “(b) AUTHORITY TO COLLECT FEES.—The Sec-
10 retary may collect fees from any individual or other person
11 attending or participating in any forum described in sub-
12 section (a) that is conducted by, or jointly with, the De-
13 partment of Commerce. The Secretary may use contrac-
14 tors to collect such fees. Fees under this subsection may
15 be collected in advance of the forum.

16 “(c) DISPOSITION OF COLLECTED FEES.—Amounts
17 collected under subsection (b) shall be used to pay all or
18 part of the cost of fora described in subsection (a), and
19 shall be credited to the account from which the costs of
20 such fora have been paid or will be paid.

21 “(d) BUDGET FOR PARTICIPATING AGENCIES.—In
22 the case of any agency that does not have the available
23 funds to participate in a forum under subsection (a), the
24 Secretary shall make such sums available, from fees col-

1 lected under subsection (b), as are necessary to allow such
2 participation by the agency.

3 “(e) AVAILABILITY OF MATERIALS TO THE PUB-
4 LIC.—The Secretary shall make available to the public, in-
5 cluding through its public website, the materials provided
6 for the fora held under subsection (a).

7 **“§ 304. Automated Export System licenses for filers**

8 “(a) LICENSES.—

9 “(1) IN GENERAL.—The Secretary may estab-
10 lish a licensing program to grant licenses to persons
11 to file information in the Automated Export System,
12 either on behalf of themselves or acting as an inter-
13 mediary. Such licensing program may provide li-
14 censes to individuals as well as any corporation, as-
15 sociation, or partnership that is organized under the
16 laws of the United States or of any State, the Dis-
17 trict of Columbia, or any commonwealth, territory,
18 or possession of the United States. Such licensing
19 program may further provide for the authorization
20 of multiple filers of data on behalf of any such cor-
21 poration, association, or partnership.

22 “(2) QUALIFICATIONS FOR INDIVIDUALS.—The
23 Secretary may establish qualification requirements
24 for an individual applying for a license under this
25 subsection, except that an individual may be granted

1 a license only if the individual is a United States cit-
2 izen, an alien lawfully admitted for permanent resi-
3 dence to the United States, or a national of the
4 United States (in the case of a resident of a terri-
5 tory or possession of the United States). In assess-
6 ing the qualification of a license applicant, the Sec-
7 retary may conduct an examination to determine the
8 applicant's knowledge of the Automated Export Sys-
9 tem and laws, regulations, and procedures related to
10 the export of goods from the United States, and may
11 require participation in a continuing education pro-
12 gram on a periodic basis. The Secretary may also
13 obtain information to determine an applicant's fit-
14 ness and character to act as an Automated Export
15 System filer.

16 “(3) LICENSES FOR CORPORATIONS AND OTHER
17 BUSINESS ENTITIES.—The Secretary may grant an
18 Automated Export System filing license to a cor-
19 poration, association, or partnership only if at least
20 one official of the corporation or association who is
21 designated by the corporation or association, or one
22 member of the partnership who is authorized to act
23 on behalf of the partnership—

24 “(A) holds a valid Automated Export Sys-
25 tem license under paragraph (2);

1 “(B) is responsible for the supervision and
2 control of filing Shipper’s Export Declaration
3 information in the Automated Export System;
4 and

5 “(C) is a United States citizen, an alien
6 lawfully admitted for permanent residence to
7 the United States, or a national of the United
8 States (in the case of a resident of a territory
9 or possession of the United States).

10 “(4) LAPSE OF LICENSE.—Licenses under this
11 subsection shall be granted for a period of not less
12 than 3 years, and may be renewed in such manner
13 and under such conditions as are established by the
14 Secretary.

15 “(b) DENIAL, SUSPENSION, OR REVOCATION OF LI-
16 CENSE.—

17 “(1) GENERAL RULE.—The Secretary may
18 deny, revoke, or suspend a license or license applica-
19 tion under subsection (a) if the Secretary has reason
20 to believe that the applicant or licensee has violated
21 or will violate any regulations issued by the Sec-
22 retary under this section or any law or regulation of
23 the United States controlling exports. The Secretary
24 may provide rules for notifying licensees and license
25 applicants of the Secretary’s process for denying, re-

1 voking, or suspending a license or license applica-
2 tion, consistent with the Secretary's responsibility to
3 protect national security.

4 “(2) PROCEDURES FOR DENIAL, REVOCATION,
5 OR SUSPENSION.—

6 “(A) IN GENERAL.—If an application is
7 denied or a license revoked or suspended under
8 paragraph (1), the Secretary shall send the ap-
9 plicant or licensee notice in writing specifically
10 setting forth the grounds for denial, suspension,
11 or revocation, shall allow the applicant or li-
12 censee a period of 30 calendar days beginning
13 on the date on which the notice is received to
14 respond in writing, and shall advise the licensee
15 or applicant of the right to a hearing. An appli-
16 cant or licensee may request an extension of
17 time for such response, and the Secretary shall
18 grant such extension for good cause shown. If
19 no response is filed within that 30-day period,
20 or any extension thereof, and the Secretary de-
21 termines that the denial, suspension, or revoca-
22 tion is still warranted, the denial, suspension,
23 or revocation shall become final.

24 “(B) HEARING.—If a timely response is
25 received under subparagraph (A) and the li-

1 censee or applicant requests a hearing, a hear-
2 ing shall be held within 30 calendar days after
3 the date on which the request is received, or at
4 a later date if the applicant requests an exten-
5 sion and shows good cause therefor. An admin-
6 istrative law judge appointed under section
7 3105 of title 5, United States Code, shall pre-
8 side at the hearing, which shall be conducted in
9 accordance with regulations issued by the Sec-
10 retary. The administrative law judge shall issue
11 a written decision, based solely on the record,
12 setting forth the findings of fact, and the rea-
13 sons for the decision.

14 “(C) SUSPENSION OF LICENSE PENDING
15 APPEAL.—In a case in which a person appeals
16 a decision revoking or suspending a license
17 under this subsection, including an appeal
18 under subsection (c), the Secretary may order
19 that the license continue to be suspended while
20 the appeal is pending.

21 “(c) DENIAL, SUSPENSION, OR REVOCATION OF LI-
22 CENSE.—

23 “(1) GENERAL RULE.—The Secretary may
24 deny, revoke, or suspend a license or license applica-
25 tion under subsection (a) if the Secretary has reason

1 to believe that the applicant or licensee has violated
2 or will violate any regulations issued by the Sec-
3 retary under this section or any law or regulation of
4 the United States controlling exports. The Secretary
5 may provide rules for notifying licensees and license
6 applicants of the Secretary's process for denying, re-
7 voking, or suspending a license or license applica-
8 tion, consistent with the Secretary's responsibility to
9 protect national security.

10 “(2) PROCEDURES FOR DENIAL, REVOCATION,
11 OR SUSPENSION.—

12 “(A) IN GENERAL.—If an application is
13 denied or a license revoked or suspended under
14 paragraph (1), the Secretary shall send the ap-
15 plicant or licensee notice in writing specifically
16 setting forth the grounds for denial, suspension,
17 or revocation, shall allow the applicant or li-
18 censee a period of 30 calendar days beginning
19 on the date on which the notice is received to
20 respond in writing, and shall advise the licensee
21 or applicant of the right to a hearing. An appli-
22 cant or licensee may request an extension of
23 time for such response, and the Secretary shall
24 grant such extension for good cause shown. If
25 no response is filed within that 30-day period,

1 or any extension thereof, and the Secretary de-
2 termines that the denial, suspension, or revoca-
3 tion is still warranted, the denial, suspension,
4 or revocation shall become final.

5 “(B) HEARING.—If a timely response is
6 received under subparagraph (A) and the li-
7 censee or applicant requests a hearing, a hear-
8 ing shall be held within 30 calendar days after
9 the date the request is received, or at a later
10 date if the applicant requests an extension and
11 shows good cause therefor. An administrative
12 law judge appointed under section 3105 of title
13 5, United States Code, shall preside at the
14 hearing, which shall be conducted in accordance
15 with regulations issued by the Secretary. The
16 administrative law judge shall issue a written
17 decision, based solely on the record, setting
18 forth the findings of fact, and the reasons for
19 the decision.

20 “(C) SUSPENSION OF LICENSE PENDING
21 APPEAL.—In a case in which a person appeals
22 a decision revoking or suspending a license
23 under this subsection, including an appeal
24 under subsection (c), the Secretary may order

1 that the license continue to be suspended while
2 the appeal is pending.

3 “(3) SETTLEMENT AND COMPROMISE.—The
4 Secretary may settle and compromise any proceeding
5 that has been instituted under this subsection ac-
6 cording to the terms and conditions agreed to by the
7 parties, including the reduction of any proposed sus-
8 pension or revocation.

9 “(4) LIMITATION OF ACTIONS.—A proceeding
10 under this subsection may be commenced only if the
11 appropriate service of written notice is made within
12 3 years after the date on which the alleged act de-
13 scribed in paragraph (1) was committed, except that
14 if the alleged act consists of fraud, the 3-year period
15 shall begin on the date on which the alleged act was
16 discovered.

17 “(d) JUDICIAL APPEAL.—

18 “(1) IN GENERAL.—A licensee under this sec-
19 tion, or an applicant for a license under this section,
20 may appeal any decision of the Secretary denying,
21 suspending, or revoking the license by filing in the
22 appropriate United States district court, within 60
23 days after the date on which the decision is issued,
24 a written petition requesting that the decision be
25 modified or set aside in whole or in part. A copy of

1 the petition shall be served upon the Secretary or
2 the Secretary's designee. In cases involving revoca-
3 tion or suspension of a license, the Secretary, after
4 receiving the petition, shall file in the court the
5 record upon which the decision complained of was
6 entered.

7 “(2) FAILURE TO APPEAL.—If an appeal is not
8 filed within the time limits specified in paragraph
9 (1), the decision of the Secretary shall be final and
10 conclusive.

11 “(e) FEES AND CHARGES.—The Secretary may issue
12 regulations prescribing reasonable fees and charges, with
13 particular sensitivity to small businesses, to defray the
14 costs of the Secretary in carrying out this section.

15 “(f) REGULATIONS.—The Secretary shall provide a
16 period of at least 90 days for the submission of public
17 comments on any regulations issued to carry out this sec-
18 tion, before such regulations may become effective.

19 **“§ 305. Blocking prohibited or restricted exports**

20 “(a) IN GENERAL.—The Secretary, in consultation
21 with the Secretary of State, the Secretary of Defense, the
22 Secretary of Homeland Security, and the Secretary of the
23 Treasury, shall issue regulations to ensure that the Auto-
24 mated Export System will not accept the filing of data
25 in connection with an export from the United States if

1 the name or address of any party to a transaction involved
2 in the intended export, or the country of destination of
3 the intended export, would result in the export violating
4 the prohibitions or restrictions in the export control or
5 trade sanctions regulations administered by the Secretary,
6 the Secretary of State, or the Secretary of the Treasury.

7 “(b) INCORPORATION INTO AUTOMATED EXPORT
8 SYSTEM OF CHANGES IN LAW.—Not later than 1 year
9 after the date of the enactment of Securing Exports
10 Through Coordination and Technology Act, the Secretary,
11 in consultation with the Secretary of State, the Secretary
12 of Defense, the Secretary of Homeland Security, and the
13 Secretary of the Treasury, shall ensure, to the extent fea-
14 sible, that changes in laws and regulations controlling ex-
15 ports, including changes under the Arms Export Control
16 Act, the Export Administration Act of 1979, the Inter-
17 national Economic Emergency Powers Act, and the For-
18 eign Assistance Act of 1961, are promptly reflected in the
19 Automated Export System.

20 “(c) MINIMUM REQUIREMENTS.—The Secretary shall
21 ensure that the Automated Export System contains at
22 least the following operational features and provides the
23 following notifications to filers:

24 “(1) Codes entered into the Automated Export
25 System to identify an export, whether by classifica-

1 tion under the Harmonized Tariff Schedule or other-
2 wise, will alert the exporter of potential export li-
3 cense requirements under the Export Administration
4 Regulations or the International Traffic in Arms
5 Regulations (ITAR).

6 “(2) Automated Export System will issue a
7 Fatal Error notice when data entered for an export
8 contain any of the following:

9 “(A) The name or address of an individual
10 or legal entity that has been described on any
11 restricted party list and the data are not ac-
12 companied by the necessary export authoriza-
13 tion.

14 “(B) The intermediate or ultimate country
15 of destination is subject to trade sanctions im-
16 posed by the United States and the data are
17 not accompanied by the necessary export au-
18 thorization.

19 “(C) In the case of defense articles and de-
20 fense services, the country of the intermediate
21 or ultimate consignee is subject to an arms em-
22 bargo or prohibition imposed by the United
23 State and the data are not accompanied by the
24 necessary export license.

1 “(3) Automated Export System will issue com-
2 pliance alerts or other warnings to the filer when
3 data for an export are entered containing any of the
4 following errors or omissions:

5 “(A) The Harmonized Tariff System code
6 is inconsistent with the Export Control Classi-
7 fication Number or the U.S. Munitions List
8 Category.

9 “(B) In the case of a dual use item, the li-
10 cense exception is not available to the country
11 of the ultimate consignee or to the intermediate
12 or ultimate consignee.

13 “(C) In the case of defense articles and de-
14 fense services, the U.S. Munitions List Cat-
15 egory is identified but no license number, ex-
16 emption, or exception is correctly identified.

17 “(4) Fatal Error notices, compliance alerts, or
18 other warnings are accompanied by references to the
19 applicable regulations and licensing authorities.

20 “(d) DEFINITIONS.—In this section:

21 “(1) DEFENSE ARTICLES AND DEFENSE SERV-
22 ICES.—The term ‘defense articles and defense serv-
23 ices’ has the meaning given that term in section
24 47(7) of the Arms Export Control Act (22 U.S.C.
25 2794(7)).

1 “(2) DUAL USE ITEM.—The term ‘dual use
2 item’ means an item subject to export controls under
3 the Export Administration Act of 1979, as continued
4 in effect pursuant to the International Emergency
5 Economic Powers Act.

6 “(3) FATAL ERROR NOTICE.—The term ‘fatal
7 error notice’ means a notice that the transaction for
8 which data are entered into the Automated Export
9 System cannot be completed.

10 “(4) RESTRICTED PARTY LIST.—The term ‘re-
11 stricted party list’ means any list maintained by any
12 department or agency of the United States that is
13 comprised of persons or entities to whom exports are
14 restricted, including the following:

15 “(A) The Denied Parties List (or com-
16 parable successor list) of the Department of
17 Commerce under the Export Administration
18 Regulations (15 C.F.R. 764 Supplement No. 2).

19 “(B) The Entity List (or comparable suc-
20 cessor list) of the Department of Commerce
21 under the Export Administration Regulations
22 (15 C.F.R. 774 Supplement No. 4).

23 “(C) The list of entities under General
24 Order No. 3 of the Department of Commerce
25 under the Export Administration Regulations

1 (15 C.F.R. 736, Supp. No. 1) (or comparable
2 successor list).

3 “(D) Those persons and entities with
4 whom transactions are blocked pursuant to sec-
5 tion 203 of the International Emergency Eco-
6 nomic Powers Act (50 U.S.C. 1702).

7 “(E) A person to whom exports of defense
8 articles or defense services are restricted under
9 section 38(g)(4) of the Arms Export Control
10 Act (22 U.S.C. 2778(g)(4)) or section 127.7 of
11 title 22, Code of Federal Regulations (or suc-
12 cessor provision).

13 “(e) CONSTRUCTION.—Nothing in this section shall
14 be construed to authorize an export because the Auto-
15 mated Export System accepts the filing of data.”.

16 **SEC. 4. DEFINITIONS.**

17 Chapter 9 of title 13, United States Code, is amended
18 by adding at the end the following new section:

19 **“§ 312. Definitions**

20 “In this chapter:

21 “(1) AUTOMATED EXPORT SYSTEM.—The term
22 ‘Automated Export System’ means the automated
23 and electronic system for filing export information
24 established under this chapter.

1 “(2) FILER.—The term ‘filer’ means an indi-
2 vidual or legal entity that is authorized to submit a
3 Shipper’s Export Declaration or Automated Export
4 System record to the Federal Government.

5 “(3) INTERMEDIARY.—The term ‘intermediary’
6 means a freight forwarder, a non-vessel operating
7 common carrier (NVOCC), an ATA (Admission
8 Temporaire/Temporary Admission) Carnet national
9 guaranteeing association and its service providers, or
10 any other similar entity as determined by the Sec-
11 retary.

12 “(4) SHIPPER’S EXPORT DECLARATION.—The
13 term ‘Shipper’s Export Declaration’ means the ex-
14 port information filed under this chapter.”.

15 **SEC. 5. CONFORMING AMENDMENTS.**

16 (a) COLLECTION AND PUBLICATION.—Section 301 of
17 title 13, United States Code, is amended by striking sub-
18 section (g) and redesignating subsection (h) as subsection
19 (g).

20 (b) REGULATIONS, ORDERS, ETC.—Section 306 of
21 title 13, United States Code, as redesignated by section
22 3(1) of this Act, is amended by striking the last sentence
23 and inserting “The Secretary shall make rules, regula-
24 tions, and orders, and amendments thereto, in consulta-
25 tion with the Secretary of Homeland Security.”.

1 (c) CROSS REFERENCES.—Section 309 of title 13,
 2 United States Code, as redesignated by section 3(1) of this
 3 Act, is amended—

4 (1) in subsection (b), by striking “304” and in-
 5 serting “308”; and

6 (2) in subsection (c)—

7 (A) in paragraph (1), by striking “304”
 8 and inserting “308”;

9 (B) in paragraph (4), by striking “306”
 10 and inserting “310”; and

11 (C) in paragraph (5), by striking “304”
 12 and inserting “308”.

13 (d) TABLE OF CONTENTS.—The table of contents for
 14 chapter 9 of title 13, United States Code, is amended to
 15 read as follows:

“CHAPTER 9

“301. Collection and publication.

“302. Confidentiality of Shipper’s Export Declarations.

“303. Conferences and seminars.

“304. Automated Export System licenses for filers.

“305. Blocking prohibited or restricted exports.

“306. Rules, regulations, and orders.

“307. Secretary of Treasury functions.

“308. Filing export information, delayed filings, penalties for failure to file.

“309. Penalties for unlawful export information activities.

“310. Delegation of functions.

“311. Relationship to general census law.

“312. Definitions.”.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out the amendments made
4 by this Act.

○